TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 230.

THOMAS FENTON, APPELLANT,

vs.

SALT LAKE COUNTY ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED OCTOBER 21, 1886.

SUPREME COURT OF THE UNITED STATES.

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APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

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a In the Supreme Court of Utah Territory. June Term, 1885.

THOMAS FENTON
vs.
SALT LAKE COUNTY, ELIAS SMITH, JOHN PAGE, MATHEW GILBY, John Miller, Peter Burt, Edmund Butterworth, Robert Condey, and Peter Condey.

Transcript.

J. D. Lomax, attorney for plaintiff and appellant.

Filed 11th May, 1885.

E. T. SPRAGUE, *Clerk.*

1 In the Third Judicial District Court, Salt Lake County, Utah Territory.

THOMAS FENTON
vs.
SALT LAKE COUNTY, ELIAS SMITH, JOHN PAGE, MATHEW GILBY, John Miller, Peter Burt, Edmund Butterworth, Robert Condey, and Peter Condey. No. 4533.

Complaint.

The plaintiff complains of the above-named defendants and for cause of action alleges—

That the defendant, Salt Lake County, now is and has been a public corporation created and existing under and by virtue of the laws of said Territory, with its boundary lines designated ever since the tenth day of January, 1866, and that said defendant in its corporate capacity has prosecuted and attended the object and business of its incorporation from said date hitherto.

That on the 1st day of July, 1869, the plaintiff was the
2 owner in possession as though in fee of blocks eleven and twelve, in plat C, Salt Lake City survey, in said county and Territory, and that on the twenty-fourth day of December, 1872, the plaintiff became seized in fee of said lands and has been and now is so seized and in the possession thereof.

That said lands were situate on Mill creek, and that the natural channel of said creek and the flow of water therein passed through the plaintiff's said premises from time immemorial until diverted by the defendants, and that the plaintiff was, from the said channel with the said water flowing therein, possessed of living water for culinary, irrigation, and other purposes, and, until the wrongs and injuries hereinafter mentioned, used the same for said purposes.

That said lands at the time the plaintiff became the owner thereof and until the time of the interference of the defendants therewith,

as hereinafter stated, were lands of great value and susceptible of a high state of cultivation as agricultural and horticultural lands, and, though at very high water in the said Mill creek the banks thereof on said lands did at times overflow, the grade of the channel of said creek below the said premises was so great that the overflowed water was soon carried off and did but little damage to growing crops on said lands.

That in consideration of the property and quality of said lands and their natural advantages as aforesaid the plaintiff improved the same, first, by building a strong, substantial fence upon the said premises, inclosing the whole thereof; also a large and comfortable dwelling-house and outhouses. The plaintiff also at great cost brought his lands to a high state of cultivation for farming, gardening, and for a plantation nursery; also planted and put out greatly to exceed one hundred thousand fruit and other trees and ornamental shrubbery on said lands so prepared for said plantation nursery; also planted a large amount of valuable grass and garden — from which he was realizing great profit.

That after the plaintiff had made said improvements, to wit, on or about the month of August, 1873, the defendants commenced the construction and building of a canal; and, upon information and belief, the plaintiff alleges that said canal was constructed for the purpose of draining a large body of lands adjacent to and southwest of said city; and, upon information and belief, allege that said defendants finished the construction of said canal in the year 1874; and, upon information and belief, allege that the initial point, course, direction, and termination of said canal is as follows, to wit: Commencing about (80) eighty rods west of the so-called Nichols concentrator, from thence almost due south on the east side of the Jordan river through the west part of Salt Lake City and near by and west of the west line of the plaintiff's said premises, and to a point about forty (40) rods east of the southeast corner of block No. one (1), in said plat C, in said Salt Lake City survey, in said county and Territory, intersecting the so-called Lambert ditch.

That said canal is commonly known as the Seventh West-street canal; that the grade of said canal from the said initial point to the said premises of the plaintiff and the flow of water therein is about two feet greater elevation than the natural flow of the water at that point in the said Mill creek hereinafter described.

That in the year 1874 the defendants, in connection with the south end of said canal, built and constructed another canal, the initial point of which canal was at low-water mark in the east bank of the first aforesaid canal and about three rods northwest of the northwest corner of the plaintiff's said premises, and on Seventh South street, in said city; thence east on and along said Seventh South street to the east side of Fifth West street; thence south on and along said Fifth West street to the southeast corner of block one (1), plat C, in said Salt Lake City survey, there intersecting the first aforesaid canal.

That the defendants placed in each of said canals at the intersection thereof large and substantial water-gates for the purpose of

changing the course of the flow of the water from one canal to the other at will.

That the defendants, in connection with the Lambert ditch, made large cuts and openings in the surface ground to the channel of said Mill creek for the purpose of changing and diverting the course of the water flowing in the channel of said creek to the said canals, and that the defendants then and there built strong dams, structures, and fills in the said channel of Mill creek and did change and divert the course of the water flowing in the channel of said creek to and through said canals, and by so doing the defendants changed and diverted the flow of water and the whole thereof in the channel of said creek or otherwise from the said premises owned by the said plaintiff as aforesaid, wholly depriving the plaintiff of the use, benefit, and profit thereof, as first aforesaid; all against the will and protest of the plaintiff.

That the common grade of the canal last constructed by the defendants was such that on the east boundary line of the plaintiff's premises, a distance of forty (40) rods, and on his north boundary line, a distance of about eighty (80) rods, the water flowed at two (2) feet greater elevation than the common flow of water in the original channel of the said Mill creek on the plaintiff's premises, as aforesaid.

That the banks of said canal were constructed of alluvial soil, and on the north of the plaintiff's said premises the said canal was constructed at an elevation of two feet above the common surface of said land, and that at high water the water flowed one foot and four-tenths of a foot above the common level of the plaintiff's said lands and at low water the water flowed in said canal only eight-tenths of one foot below the said level of said lands.

That the plaintiff's said lands are what are commonly denominated made or alluvial lands, and that water coming in contact therewith permeates the same quickly.

That in the early spring and during the farming season of the years 1878, 1879, and to the commencement of this action in the year 1880 the defendants changed and diverted the course and flow of the water of the said Mill creek on and along the channels of said canals and the greater part thereof along the channel of the last-constructed canal, as aforesaid, and that when the water came in contact with the banks of said canal it permeated said banks and the lands of the plaintiff, inundating the same and the crops thereon, and that by reason of said canal being on the west, on the north, and on the east of the plaintiff's said premises and in close proximity therewith the plaintiff was wholly disabled and estopped from draining his said land from said overflows and inundations, and that said overflows and inundations have wholly destroyed the plaintiff's said crops and nursery, and has [have] also rendered his said lands and improvements thereon valueless.

That by reason of the premises he has been injured and sustained damages of the amount of four thousand (4,000) dollars.

That the said last-constructed canal is wholly valueless as a public improvement, and that it is a common nuisance to all inhabitants adjacent thereto, and is detrimental to their farming and horticultural business, and that the water, during the warmest summer months, becomes stagnant in said canal and on the lands adjacent thereto, thereby producing malarial poison, and is injurious and dangerous to the health of all said citizens and to this plaintiff, and that said canal is a continuing, growing injury and nuisance to this plaintiff and should be abated.

6

And plaintiff further shows that he is without any adequate remedy at law to abate the grievances, wrongs, and injuries so practiced upon him by the defendants aforesaid, and is entirely remediless without the equitable interposition of the courts.

Wherefore the plaintiff asks judgment—

1st. That the defendants pay to the plaintiff four thousand (4,000) dollars damages done to and suffered by the premises.

2d. That the defendants cause a sufficient amount of the water flowing in said Mill creek to flow through the plaintiff's said premises for irrigating his crops thereon and for other purposes common on such premises while there is water in said Mill creek, and that they prepare a sufficient channel for the flow of said water through and below said premises.

3d. That the defendants be enjoined from diverting the flow of the water from said Mill creek, or elsewhere, to and through the channel of the said last-constructed canals.

That the plaintiff have such other and further relief in the premises as may be just and right, and for the costs of this suit.

J. D. LOMAX,
Attorney for Plaintiff.

SALT LAKE COUNTY, } ss:
Utah Territory, }

7

Thomas Fenton, being first duly sworn, deposes: I am the plaintiff in the above-entitled action; that I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except the matters therein stated upon information and belief, and as to those matters I believe it to be true.

THOMAS FENTON.

Subscribed and sworn to before me on this the ninth (9th) day of September, A. D. one thousand eight hundred and eighty (1880).

[SEAL.] ELI B. KELSEY,
Notary Public.

The summons, in due form, was issued and served, but, as no questions arose about it, it is omitted in the transcript.

Endorsed: No. 4533. Title of court and cause. Complaint.

Filed September 18, 1880. O. J. Averill, clerk, by H. G. McMillan, deputy clerk. "Copy." J. D. Lomax, attorney for plaintiff.

8 In the District Court, Third Judicial District, Territory of Utah, Salt Lake County.

THOMAS FENTON
vs.
SALT LAKE COUNTY, ELIAS SMITH, JOHN PAGE, MATHEW GILBY, John Miller, Peter Burt, Edmund Butterworth, Robert Condy, and Peter Condy.

Now comes Salt Lake County, one of the defendants to this action, and demurs to the complaint of the plaintiff herein filed, and for cause of demurrer says—

The complaint does not state facts sufficient to constitute a cause of action against this defendant.

SALT LAKE COUNTY,
By Z. SNOW, *Its Attorney.*

Verified by Z. Snow and filed Nov. 20, 1880.

These demurrers were overruled by the court and leave given to all of the defendants except Salt Lake county to file an answer, which was done.

9 In the District Court for the Third Judicial District, Territory of Utah.

THOMAS FENTON
vs.
SALT LAKE COUNTY.

The remittitur from the supreme court having been filed herein, from which it appears that the judgment of this court in this case is reversed, and further ordering that this court sustain the demurrer of defendant in this action to the complaint, *and* it is ordered that the demurrer to the complaint herein be, and the same is hereby, sustained; to which plaintiff excepts, and defendant is awarded his costs, taxed at $289.03, and on remittitur, $47.00, and plaintiff is allowed forty (40) days' stay of proceedings on said judgment.

December 11, 1884.

(Title of court and cause.)

This cause being brought on to be heard upon the remittitur from supreme court herein and upon the demurrer to the complaint herein, and the court now fully advised in the premises, and on motion of Z. Snow, attorney for the defendant, it is ordered that the demurrer herein be, and the same is hereby, sustained; and it is further ordered, adjudged, and decreed that said plaintiff take nothing by his said suit and that the complaint herein be dismissed.

10 And it is further ordered, adjudged, and decreed that said defendant, Salt Lake County, have and recover from the plaintiff its costs herein expended and taxed at $289.03, together with said defendant's costs incurred in the supreme court and taxed therein at $147.00; in all, $436.03.

Judgment entered December 11, 1884.

Title of court and cause.

It is hereby stipulated by and between the parties in the above-entitled action that the plaintiff and appellant shall have until the 5th day of May, 1885, to file in the supreme court of this Territory a transcript of his appeal in said cause.

J. D. LOMAX,
Attorney for Appellant.
Z. SNOW,
Attorney for Defendant.

In view of the above stipulation and to give effect thereto, it is hereby ordered that the plaintiff and appellant have the further time to and including the fifth day of May, 1885, to file his transcript on appeal to the supreme court in and for said Territory of Utah in the above-entitled action.

C. S. ZANE,
Judge of the Third District Court.

Filed April 15, 1885.

JOHN M. ZANE, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

11 In the Third Judicial District Court, Salt Lake County, Utah Territory.

THOMAS FENTON, Plaintiff,
vs.
SALT LAKE COUNTY, JOHN PAGE, MATTHEW GILBY, JOAN MILLER, Peter Burt, Edward Butterworth, Robert Condy, and Peter Condy, Defendants.

Whereas the plaintiff in the above-entitled action has appealed to the supreme court of the Territory of Utah from a judgment entered against him in the said action on the eleventh day of December, 1884, for four hundred and thirty-six dollars and three cents ($436.03), lawful money of the United States of America, the same being costs incurred in the courts in the above-entitled action, and from the whole of said judgment: Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, William A. Wetzel, of the city and county of Salt Lake, and Wallace T. Fenton, of the same place, do hereby jointly and severally under-

take and promise on the part of the appellant that the appellant will pay all damages and costs which may be awarded against him on an appeal or on the dismissal thereof, not exceeding the sum of three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound; and whereas the appellant is desirous of staying the execution of the said judgment so appealed
12 from, we do further, in consideration thereof and of the premises, and do acknowledge ourselves further jointly and severally bound in the sum of eight hundred and seventy-two dollars and six cents ($872.06), lawful money of the United States of America, being double the amount named in the said judgment appealed from; or — any part thereof be affirmed or the appeal thereof be dismissed, the appellant will pay the amount directed to be paid by the — or order or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal.

WILLIAM A. WETZEL. [SEAL.]
WALLACE T. FENTON. [SEAL.]

TERRITORY OF UTAH, }
City and County of Salt Lake. }

William A. Wetzel and Wallace T. Fenton, the persons named and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself says that he is a real estate and house holder in the said county of Salt Lake, in said Territory, and is a resident therein, and that he is worth the amount specified in said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

WILLIAM A. WETZEL.
WALLACE T. FENTON.

Subscribed and sworn before me this thirty-first day of January, 1885.

[SEAL.] JAMES THOMPSON,
Notary Public.

Endorsed: Title of cause. Filed January 31, 1885. John M. Zane, clerk.

13 THOMAS FENTON, Plaintiff, }
vs. }
SALT LAKE COUNTY, JOHN PAGE, MATTHEW GILBY, JOHN MILLER, Peter Burt, Edmund Butterworth, Robert Condy, and Peter Condy, Defendants. }

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of the Territory of Utah from the judgment therein made and entered in the said district

court on the 11th day of December, 1884, in favor of the defendant and against the plaintiff, and from the whole thereof.

Dated this 28th day of January, 1885.

J. D. LOMAX,
Attorney for Plaintiff and Appellant.

To the clerk of said district court and Z. Snow, attorney for defendant and respondent.

Endorsed: Title of cause. Notice of appeal. Filed January 28, 1885. J. M. Zane, clerk, by H. G. McMillan, deputy clerk.

Admit service of the within notice by the delivery of a true copy thereof this 28th day of January, 1885.

Z. SNOW,
Attorney for Defendant and Respondent.

14 Title of court and cause.

Whereas it has been made to appear to my satisfaction that further time is required by the plaintiff and appellant to file with the supreme court of his Territory the transcript on appeal, it is therefore ordered that the time for filing such transcript on appeal in the above-entitled action be extended to and including the eleventh day of May, 1885.

C. S. ZANE,
Judge of said Court.

May 5, 1885.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, John M. Zane, clerk of the third judicial district court of Utah Territory, do hereby certify that the foregoing is a full, true, and correct copy of the original complaint, demurrer, order sustaining demurrer, stipulation and order, and judgment, undertaking on appeal, and notice of appeal, order extending time to file transcript in the above-entitled action, filed in my office.

Witness my hand and the seal of said court, at Salt Lake City, this 11th day of May, A. D. 1885.

[SEAL.]

J. M. ZANE, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

15 TUESDAY, *June 2d, A. D.* 1885.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Imp., &c., Respondent. } From 3d Dist.

A motion by counsel of respondent to dismiss the appeal of this cause was argued by Mr. Snow, for respondent; Mr. Lomax, for appellant; submitted and taken under advisement.

MONDAY, *June 8th, A. D.* 1885.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Imp., &c., Respondent. } From 3d Dist.

The motion to dismiss the appeal of this cause submitted the 2d day of June inst. is hereby overruled and denied.

16 MONDAY, *January 11th, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Imp., &c., Respondent. } From 3d Dist.

On consent of the respective parties, ordered that this cause be, and it is, continued till the next term of this court.

THURSDAY, *June 10th, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

This cause coming on regularly for hearing was argued by J. D. Lomax, for appellant; Z. Snow, for respondent; submitted and taken under advisement.

WEDNESDAY, *June 23d, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

By leave of court this cause was further argued on the
17 matter of an injunction therein involved; resubmitted and taken under advisement.

THURSDAY, *July 1st, A. D.* 1886.

A session of the supreme court of Utah Territory was held this day, beginning at 10 o'clock a. m., pursuant to adjournment.

Present: All the justices, the clerk, marshal, and members of the bar.

Court was duly opened.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereupon, it is now here considered,

ordered, and adjudged that the judgment of the district court therein be, and it is hereby, affirmed, and that respondent have and recover of and from appellant — costs.

Thereafter said appellant, by his counsel, J. D. Lomax, Esq., prayed the allowance of an appeal from this judgment to the Supreme Court of the United States and asked that the amount of a supersedeas bond to be given thereon be fixed. This application was by
18 the court taken under advisement.

Respondent also asked an allowance of ten per cent. on the amount of the judgment in his favor of the said district court, and this was also taken under advisement.

THURSDAY, *July 8th, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

The appeal heretofore prayed for in this cause to the Supreme Court of the United States is hereby refused and denied, and this court declines to fix the amount of any supersedeas bond to be given thereon.

19 In the Supreme Court, Utah Territory.

THOMAS FENTON, Plaintiff & Appellant,
vs.
SALT LAKE COUNTY, Defendant & Respondent.

Opinion of the Court.

POWERS, *J.:*

This cause was first before this court in June, 1884, and is reported in 3d Utah, 423. At that time this court held that the demurrer overruled in the court below should have been sustained and the judgment was reversed with instructions to the lower court to sustain the demurrer. This court said:

"The demurrer raises the point that the complaint does not state facts sufficient to constitute a cause of action against the defendant county, inasmuch as there is no averment that the claim was presented to and disallowed by the county court in accordance with the provisions of § 6 of an act of the territorial Legislature approved February 18th, 1885."

"The section referred to provides that 'no action shall be commenced or maintained against any county until the person or party having a claim, demand, or right of action shall present the same to the county court thereof, with proof of the correctness
20 of such claim, demand, or right, and until the same shall have been disallowed by said court.' The next section pro-

vides that if a claim or demand is not audited in four months after presentation it shall be deemed to be disallowed. Sess. Laws 1878, p. 4."

"This provision is founded in wisdom and in furtherance of a judicious public policy to prevent needless litigation and save unnecessary expense and costs by affording an opportunity amicably to adjust all claims of every nature against a county before suit brought. The right to commence or maintain any action against a county is, by the statute, made to depend upon the fact that the claim, demand, or right of action has first been presented to the county court and has been disallowed either expressly or by non-action."

"This fact must be stated in the complaint. It is a substantial obligation upon which the plaintiff's right of recovery depends, and without it the complaint fails to state a cause of action against the county."

The cause being remanded to the lower court and the de-
21 fendant electing to stand upon his complaint, on the 11th day of December, 1884, the lower court made the following order:

"This cause being brought on to be heard upon the remittitur from the supreme court herein and upon the demurrer to the complaint herein, and the court now being fully advised in the premises, and on motion of Z. Snow, attorney for the defendants, it is ordered that the demurrer herein be, and the same is hereby, sustained; and it is further ordered, adjudged, and decreed that said plaintiff take nothing by his said suit, and that the complaint herein be dismissed; and is is further ordered, adjudged, and decreed that the said defendant, Salt Lake County, have and recover from the plaintiff its costs herein expended and taxed at $289.03, together with said defendants' costs incurred in the supreme court and taxed therein at $147.00—in all, $436.03."

From this judgment the plaintiff appeals to this court, as he is entitled to do. Macom *vs.* Commissioners, 91 U. S., 1.

The only question which is now before us to pass upon is whether the court below followed the order of the supreme court. It
22 having done so, there is no error for us to consider, and judgment is affirmed with costs.

Zane, C. J., concurs.

Boreman, A. J., concurs.

Endorsed: In the supreme court, Utah Territory. Thomas Fenton, appellant, *vs.* Salt Lake County, respondent. Opinion of the court. Filed July 1st, 1886. E. T. Sprague, clerk.

23 In the Supreme Court in and for the Territory of Utah.

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY *et al.*, Respondents. } *ss:*

J. D. Lomax, being first duly sworn, deposes: I am the attorney

for the appellants in the above-entitled action, and that I am familiar with the property in question and the value thereof and of the matter in dispute, in the said action, and that the matter so in dispute greatly exceeds the sum of five thousand dollars; that said matter in dispute over and above the sum of four thousand dollars charged as damages in the complaint in said action, consists in the right to the permanent existence of a living stream of water upon and through the lands in said complaint described, with the right of perfect drainage of said lands; the right to which said stream and drainage is of a value exceeding five thousand dollars; and further deponent saith not.

J. D. LOMAX.

Subscribed & sworn to before me this 7th July, 1886.
[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court.

24 Endorsed: Fenton *vs.* Salt Lake Co. Aff'd't of value. Filed July 7, 1886. E. T. Sprague, clerk.

25 In the Supreme Court in and for the Territory of Utah.

THOMAS FENTON, Plaintiff,
vs.
SALT LAKE COUNTY *et al.*, Defendants. } *ss:*

Thomas Fenton, being first duly sworn, deposes: I am the appellant in the above-entitled action and know the value of the property described in the complaint in this action and the value of the matter in dispute, and that the value of the matter in dispute exclusive of the damages claimed in said complaint greatly exceeds the sum of five thousand dollars; that said matter in dispute over and above the sum of four thousand dollars charged as damages in the complaint in said action consists in the right to the permanent existence of a living stream of water upon and through the land in said complaint described, with the right of perfect drainage of said land, and the use of trees and shrubbery planted and growing in order and for the purpose of pleasure gardens; the right to which said stream, drainage, and trees and shrubbery is of a value exceeding five
26 thousand dollars; and further deponent saith not.

THOMAS FENTON.

Sworn to before me this 20th day of July, 1886.
[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

Endorsed: Thomas Fenton *vs.* Salt Lake County *et al.* Affidavit of Thomas Fenton. Filed July 20th, 1886. E. T. Sprague, clerk.

27 To the Honorable Judg- Woods, justice of the Supreme Court of the United States:

This petition of Thomas Fenton respectfully shows that it is believed that there is error in the judgment rendered against him in

the supreme court of the Territory of Utah on the first day of July, 1886, affirming a judgment of the district court for the third judicial district of said Territory on the suit of Thomas Fenton (your petitioner) against Salt Lake County *et al.*

Said judgment was rendered on a record of which a copy is hereto annexed, marked Ex-ibit A, including said judgment of affirmance.

That subsequently, on the eighth day of July, 1886, said supreme court of the Territory of Utah refused to allow an appeal therefrom to the honerable the Supreme Court of the United States, as appears by the order of said court, a copy of which is hereto annexed, marked Ex-ibit B. Both of said ex-ibits are made part of this petition.

28 It is also believed that an appeal from said judgment is authorized by the act of Congress of March 3rd, 1885, regulating, among other things, appeals from the supreme courts of the several Territories.

That the matter in dispute, exclusive of cost, exceeds in value the sum of five thousand dollars.

Wherefore Thomas Fenton prays that your honer may be pleased to allow an appeal to be taken from said judgment to the Supreme Court of the United States.

J. D. LOMAX,
Attorney for Petitioner.

An appeal as prayed for in the foregoing petition is allowed on the giving by the appellant of a bond in the sum of thirteen hundred dollars, conditioned according to law.

W. B. WOODS,
Associate Justice U. S. Supreme Court.

August 9, 1886.

29 EX. A.

In the Supreme Court of Utah Territory. June Term, 1885.

THOMAS FENTON
vs.
SALT LAKE COUNTY, ELIAS SMITH, JOHN PAGE, MATHEW GILBY, John Miller, Peter Burt, Edmund Butterworth, Robert Condey, and Peter Condey.

Transcript.

J. D. Lomax, attorney for plaintiff and appellant.

Filed May 11th, 1885.

E. T. SPRAGUE, *Clerk.*

30 In the Third Judicial District Court, Salt Lake County, Utah Territory.

THOMAS FENTON
vs.
SALT LAKE COUNTY, ELIAS SMITH, JOHN PAGE, MATHEW Gilby, John Miller, Peter Burt, Edmund Butterworth, Robert Condey, and Peter Condey. } No. 4533.

Complaint.

The plaintiff complains of the above-named defendants and for cause of action alleges—

That the defendant, Salt Lake County, now is and has been a public corporation created and existing under and by virtue of the laws of said Territory, with its boundary lines designated ever since the tenth day of January, 1866, and that said defendant in its corporate capacity has prosecuted and attended the object and business of its incorporation from said date hitherto.

That on the 1st day of July, 1869, the plaintiff was the
31 owner in possession as though in fee of blocks eleven and twelve, in plat C, Salt Lake City survey, in said county and Territory, and that on the twenty-fourth day of December, 1872, the plaintiff became seized in fee of said lands and has been and now is so seized and in the possession thereof.

That said lands were situate on Mill creek, and that the natural channel of said creek and the flow of water therein passed through the plaintiff's said premises from time immemorial until diverted by the defendants, and that the plaintiff was, from the said channel with the said water flowing therein, possessed of living water for culinary, irrigation, and other purposes, and, until the wrongs and injuries hereinafter mentioned, used the same for said purposes.

That said lands at the time the plaintiff became the owner thereof and until the time of the interference of the defendants therewith, as hereinafter stated, were lands of great value and susceptible of a high state of cultivation as agricultural and horticultural lands, and, though at very high water in the said Mill creek the banks thereof on said lands did at times overflow, the grade of the channel of said creek below the said premises was so great that the overflowed water was soon carried off and did but little damage to growing crops on said lands.

That in consideration of the property and quality of said lands and their natural advantages as aforesaid the plaintiff improved the same, first, by building a strong, substantial fence upon the said premises, inclosing the whole thereof; also a large and comfortable dwelling-house and outhouses. The plaintiff also at great cost brought his lands to a high state of cultivation for farming, gardening, and for a plantation nursery; also planted and put out greatly to exceed one hundred thousand fruit and other trees and orna-

mental shrubbery on said lands so prepared for said plantation nursery; also planted a large amount of valuable grass
32 and garden — from which he was realizing great profit.

That after the plaintiff had made said improvements, to wit, on or about the month of August, 1873, the defendants commenced the construction and building of a canal; and, upon information and belief, the plaintiff alleges that said canal was constructed for the purpose of draining a large body of lands adjacent to and southwest of said city; and, upon information and belief, allege that said defendants finished the construction of said canal in the year 1874; and, upon information and belief, allege that the initial point, course, direction, and termination of said canal is as follows, to wit: Commencing about (80) eighty rods west of the so-called Nichols concentrator, from thence almost due south on the east side of the Jordan river through the west part of Salt Lake City and near by and west of the west line of the plaintiff's said premises, and to a point about forty (40) rods east of the southeast corner of block No. one (1), in said plat C, in said Salt Lake City survey, in said county and Territory, intersecting the so-called Lambert ditch.

That said canal is commonly known as the Seventh West-street canal; that the grade of said canal from the said initial point to the said premises of the plaintiff and the flow of water therein is about two feet greater elevation than the natural flow of the water at that point in the said Mill creek hereinafter described.

That in the year 1874 the defendants, in connection with the south end of said canal, built and constructed another canal, the initial point of which canal was at low-water mark in the east bank of the first aforesaid canal and about three rods northwest of the northwest corner of the plaintiff's said premises, and on Seventh South street, in said city; thence east on and along said Sev-
33 enth South street to the east side of Fifth West street; thence south on and along said Fifth West street to the southeast corner of block one (1), plat C, in said Salt Lake City survey, there intersecting the first aforesaid canal.

That the defendants placed in each of said canals at the intersection thereof large and substantial water-gates for the purpose of changing the course of the flow of the water from one canal to the other at will.

That the defendants, in connection with the Lambert ditch, made large cuts and openings in the surface ground to the channel of said Mill creek for the purpose of changing and diverting the course of the water flowing in the channel of said creek to the said canals, and that the defendants then and there built strong dams, structures, and fills in the said channel of Mill creek and did change and divert the course of the water flowing in the channel of said creek to and through said canals, and by so doing the defendants changed and diverted the flow of water and the whole thereof in the channel of said creek or otherwise from the said premises owned by the said plaintiff as aforesaid, wholly depriving the plaintiff of the use, benefit, and profit thereof, as first aforesaid; all against the will and protest of the plaintiff.

That the common grade of the canal last constructed by the defendants was such that on the east boundary line of the plaintiff's premises, a distance of forty (40) rods, and on his north boundary line, a distance of about eighty (80) rods, the water flowed at two (2) feet greater elevation than the common flow of water in the original channel of the said Mill creek on the plaintiff's premises, as aforesaid.

That the banks of said canal were constructed of alluvial soil, and on the north of the plaintiff's said premises the said canal was constructed at an elevation of two feet above the common sur-
34 face of said land, and that at high water the water flowed one foot and four-tenths of a foot above the common level of the plaintiff's said lands and at low water the water flowed in said canal only eight-tenths of one foot below the said level of said lands.

That the plaintiff's said lands are what are commonly denominated made or alluvial lands, and that water coming in contact therewith permeates the same quickly.

That in the early spring and during the farming season of the years 1878, 1879, and to the commencement of this action in the year 1880 the defendants changed and diverted the course and flow of the water of the said Mill creek on and along the channels of said canals and the greater part thereof along the channel of the last-constructed canal, as aforesaid, and that when the water came in contact with the banks of said canal it permeated said banks and the lands of the plaintiff, inundating the same and the crops thereon, and that by reason of said canal being on the west, on the north, and on the east of the plaintiff's said premises and in close proximity therewith the plaintiff was wholly disabled and estopped from draining his said land from said overflows and inundations, and that said overflows and inundations have wholly destroyed the plaintiff's said crops and nursery, and has [have] also rendered his said lands and improvements thereon valueless.

That by reason of the premises he has been injured and sustained damages of the amount of four thousand (4,000) dollars.

That the said last-constructed canal is wholly valueless as a public improvement, and that it is a common nuisance to all inhabitants adjacent thereto, and is detrimental to their farming and horticult-
ural business, and that the water, during the warmest sum-
35 mer months, becomes stagnant in said canal and on the lands adjacent thereto, thereby producing malarial poison, and is injurious and dangerous to the health of all said citizens and to this plaintiff, and that said canal is a continuing, growing injury and nuisance to this plaintiff and should be abated.

And plaintiff further shows that he is without any adequate remedy at law to abate the grievances, wrongs, and injuries so practiced upon him by the defendants aforesaid, and is entirely remediless without the equitable interposition of the courts.

Wherefore the plaintiff asks judgment—

1st. That the defendants pay to the plaintiff four thousand (4,000) dollars damages done to and suffered by the premises.

2d. That the defendants cause a sufficient amount of the water flowing in said Mill creek to flow through the plaintiff's said premises for irrigating his crops thereon and for other purposes common on such premises while there is water in said Mill creek, and that they prepare a sufficient channel for the flow of said water through and below said premises.

3d. That the defendants be enjoined from diverting the flow of the water from said Mill creek, or elsewhere, to and through the channel of the said last-constructed canals.

That the plaintiff have such other and further relief in the premises as may be just and right, and for the costs of this suit.

J. D. LOMAX,
Attorney for Plaintiff.

SALT LAKE COUNTY, } ss:
Utah Territory, }

36 Thomas Fenton, being first duly sworn, deposes: I am the plaintiff in the above-entitled action; that I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except the matters therein stated upon information and belief, and as to those matters I believe it to be true.

THOMAS FENTON.

Subscribed and sworn to before me on this the ninth (9th) day of September, A. D. one thousand eight hundred and eighty (1880).

[SEAL.] ELI B. KELSEY,
Notary Public.

The summons, in due form, was issued and served, but, as no questions arose about it, it is omitted in the transcript.

Endorsed: No. 4533. Title of court and cause. Complaint. Filed September 18, 1880. O. J. Averill, clerk, by H. G. McMillan, deputy clerk. "Copy." J. D. Lomax, attorney for plaintiff.

37 In the District Court, Third Judicial District, Territory of Utah, Salt Lake County.

THOMAS FENTON
vs.
SALT LAKE COUNTY, ELIAS SMITH, JOHN PAGE, MATHEW GILBY, John Miller, Peter Burt, Edmund Butterworth, Robert Condy, and Peter Condy.

Now comes Salt Lake County, one of the defendants to this action, and demurs to the complaint of the plaintiff herein filed, and for cause of demurrer says—

The complaint does not state facts sufficient to constitute a cause of action against this defendant.

SALT LAKE COUNTY,
By Z. SNOW, *Its Attorney.*

Verified by Z. Snow and filed Nov. 20, 1880.

These demurrers were overruled by the court and leave given to all of the defendants except Salt Lake county to file an answer, which was done.

38 In the District Court for the Third Judicial District, Territory of Utah.

THOMAS FENTON
vs.
SALT LAKE COUNTY.

The remittitur from the supreme court having been filed herein, from which it appears that the judgment of this court in this case is reversed, and further ordering that this court sustain the demurrer of defendant in this action to the complaint, *and* it is ordered that the demurrer to the complaint herein be, and the same is hereby, sustained; to which plaintiff excepts, and defendant is awarded his costs, taxed at $289.03, and on remittitur, $47.00, and plaintiff is allowed forty (40) days' stay of proceedings on said judgment.
December 11, 1884.

(Title of court and cause.)

This cause being brought on to be heard upon the remittitur from supreme court herein and upon the demurrer to the complaint herein, and the court now fully advised in the premises, and on motion of Z. Snow, attorney for the defendant, it is ordered that the demurrer herein be, and the same is hereby, sustained; and it is further ordered, adjudged, and decreed that said plaintiff take nothing by his said suit and that the complaint herein be dismissed.

39 And it is further ordered, adjudged, and decreed that said defendant, Salt Lake County, have and recover from the plaintiff its costs herein expended and taxed at $289.03, together with said defendant's costs incurred in the supreme court and taxed therein at $147.00; in all, $436.03.
Judgment entered December 11, 1884.

Title of court and cause.

It is hereby stipulated by and between the parties in the above-entitled action that the plaintiff and appellant shall have until the

5th day of May, 1885, to file in the supreme court of this Territory a transcript of his appeal in said cause.

J. D. LOMAX,
Attorney for Appellant.
Z. SNOW,
Attorney for Defendant.

In view of the above stipulation and to give effect thereto, it is hereby ordered that the plaintiff and appellant have the further time to and including the fifth day of May, 1885, to file his transcript on appeal to the supreme court in and for said Territory of Utah in the above-entitled action.

C. S. ZANE,
Judge of the Third District Court.

Filed April 15, 1885.

JOHN M. ZANE, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

40 In the Third Judicial District Court, Salt Lake County, Utah Territory.

THOMAS FENTON, Plaintiff,
vs.
SALT LAKE COUNTY, JOHN PAGE, MATTHEW GILBY, JOAN MILLER, Peter Burt, Edward Butterworth, Robert Condy, and Peter Condy, Defendants.

Whereas the plaintiff in the above-entitled action has appealed to the supreme court of the Territory of Utah from a judgment entered against him in the said action on the eleventh day of December, 1884, for four hundred and thirty-six dollars and three cents ($436.03), lawful money of the United States of America, the same being costs incurred in the courts in the above-entitled action, and from the whole of said judgment: Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, William A. Wetzel, of the city and county of Salt Lake, and Wallace T. Fenton, of the same place, do hereby jointly and severally undertake and promise on the part of the appellant that the appellant will pay all damages and costs which may be awarded against him on an appeal or on the dismissal thereof, not exceeding the sum of three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound; and whereas the appellant is desirous of staying the execution of the said judgment so appealed
41 from, we do further, in consideration thereof and of the premises, and do acknowledge ourselves further jointly and severally bound in the sum of eight hundred and seventy-two dollars and six cents ($872.06), lawful money of the United States of America, being double the amount named in the said judgment appealed from; or — any part thereof be affirmed or the appeal thereof

be dismissed, the appellant will pay the amount directed to be paid by the — or order or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal.

WILLIAM A. WETZEL. [SEAL.]
WALLACE T. FENTON. [SEAL.]

TERRITORY OF UTAH, }
City and County of Salt Lake. }

William A. Wetzel and Wallace T. Fenton, the persons named and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself says that he is a real estate and house holder in the said county of Salt Lake, in said Territory, and is a resident therein, and that he is worth the amount specified in said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

WILLIAM A. WETZEL.
WALLACE T. FENTON.

Subscribed and sworn before me this thirty-first (31) day of January, 1885.

[SEAL.] JAMES THOMPSON,
Notary Public.

Endorsed: Title of cause. Filed January 31, 1885. John M. Zane, clerk.

42 THOMAS FENTON, Plaintiff,
vs.
SALT LAKE COUNTY, JOHN PAGE, MATTHEW GILBY, JOHN MILLER, Peter Burt, Edmund Butterworth, Robert Condy, and Peter Condy, Defendants.

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of the Territory of Utah from the judgment therein made and entered in the said district court on the 11th day of December, 1884, in favor of the defendant and against the plaintiff, and from the whole thereof.

Dated this 28th day of January, 1885.

J. D. LOMAX,
Attorney for Plaintiff and Appellant.

To the clerk of said district court and Z. Snow, attorney for defendant and respondent.

Endorsed: Title of cause. Notice of appeal. Filed January 28, 1885. J. M. Zane, clerk, by H. G. McMillan, deputy clerk.

Admit service of the within notice by the delivery of a true copy thereof this 28th day of January, 1885.

Z. SNOW,
Attorney for Defendant and Respondent.

42½ Title of court and cause.

Whereas it has been made to appear to my satisfaction that further time is required by the plaintiff and appellant to file with the supreme court of this Territory the transcript on appeal, it is therefore ordered that the time for filing such transcript on appeal in the above-entitled action be extended to and including the eleventh day of May, 1885.

C. S. ZANE,
Judge of said Court.

May 5, 1885.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, John M. Zane, clerk of the third judicial district court of Utah Territory, do hereby certify that the foregoing is a full, true, and correct copy of the original complaint, demurrer, order sustaining demurrer, stipulation and order, and judgment, undertaking on appeal and notice of appeal, order extending time to file transcript in the above-entitled action, filed in my office.

Witness my hand and the seal of said court, at Salt Lake City, this 11th day of May, A. D. 1885.

[SEAL.]

J. M. ZANE, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

43 MONDAY, *January 11th, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Imp., Respondent. } From 3d Dist.

On consent of the respective parties, ordered that this cause be, and it is, continued till the next term of this court.

THURSDAY, *June 10th, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

This cause coming on regularly for hearing was argued by J. D. Lomax, for appellant; Z. Snow, for respondent; submitted and taken under advisement.

WEDNESDAY, *June 23d, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

44 By leave of court this cause was further argued on the matter of an injunction therein involved; resubmitted and taken under advisement.

JULY 1ST, A. D. 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Respondent. } From 3d Dist.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereupon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and it is hereby, affirmed, and that respondent have and recover of and from appellant — costs.

Thereafter appellant, by his counsel, J. D. Lomax, Esq., prayed the allowance of an appeal from this judgment to the Supreme Court of the United States and asked that the amount of a supersedeas bond to be given thereon be fixed. This application
45 & 46 was by the court taken under advisement.

(EX. B.)

THURSDAY, *July 8th, A. D.* 1886.

* * * * * * *

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, Appellant [Respondent]. } From 3d Dist.

The appeal heretofore prayed for in this cause to the Supreme Court of the United States is hereby refused and denied, and this court declines to fix the amount of any supersedeas bond to be given thereon.

47 In the Supreme Court in and for the Territory of Utah.

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY *et al.*, Respondents. } *ss.*

J. D. Lomax, being first duly sworn, deposes: I am the attorney

for the appellant in the above-entitled action, and that I am familiar with the property in question and the value thereof and of the matter in dispute in the said action, and that the matter so in dispute greatly exceeds the sum of five thousand dollars; that said matter in dispute, over and above the sum of four thousand dollars charged as damages in the complaint in said action, consists in the right to the permanent existence of a living stream of water upon and through the lands in said complaint described, with the right of perfect drainage of said lands, the right to which said stream and drainage is of a value exceeding five thousand dollars; and further
48 deponent saith not.

J. D. LOMAX.

Subscribed and sworn to before me this 7th July, 1886.
[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court.

[Endorsed:] Fenton *vs.* Salt Lake Co. Aff'd'v'ts of value. Filed July 7th, 1886. E. T. Sprague, clerk.

49 In the Supreme Court in and for the Territory of Utah.

THOMAS FENTON, Plaintiff,
vs.
SALT LAKE COUNTY *et al.*, Defendants, } *ss.*

Thomas Fenton, being first duly sworn, deposes: I am the appellant in the above-entitled action, and know the value of the property described in the complaint in this action and the value of the matter in dispute, and that the value of the matter in dispute, exclusive of the damages claimed in said complaint, greatly exceeds the sum of five thousand dollars.

That said matter in dispute, over and above the sum of four thousand dollars charged as damages in the complaint in said action, consists in the right to the permanent existence of a living stream of water upon and through the land in said complaint described, with the right of perfect drainage of said land and the use of
50 trees and shrubbery planted and growing in order, and for the purpose of pleasure gardens; the right to which said stream, drainage, and trees and shrubbery is of a value exceeding five thousand dollars; and further deponent saith not.

THOMAS FENTON.

Sworn to before me this 20th day of July, 1886.
[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

[Endorsed:] Thomas Fenton *vs.* Salt Lake County *et al.* Affidavit of Thomas Fenton. Filed July 20th, 1886. E. T. Sprague, clerk.

51 TERRITORY OF UTAH, } *ss:*
Salt Lake County, }

I, Ezra T. Sprague, clerk of the supreme court of said Territory

of Utah, do hereby certify that the annexed and foregoing is a full, true, and correct copy of the record, the judgment, the application for and refusal of allowance of appeal, and affidavits of the value of the matter in dispute, all in and of said court in the cause therein described, and all on file or of record in my office.

Seal United States of America, Supreme Court Territory of Utah.

In testimony whereof I have hereunto set my hand and the seal of said court this 31st day of July, A. D. 1886.

E. T. SPRAGUE, *Clerk.*

[Endorsed:] Fenton *vs.* Salt Lake County. Filed Aug. 16, 1886. E. T. Sprague, clerk.

52 Supreme Court of the United States.

THOMAS FENTON, Appellant,
vs.
SALT LAKE COUNTY, *et al.*, Appellees.

The United States of America to the above appellees:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington the second Monday of October next, pursuant to an appeal filed in the clerk's office of the supreme court of the Territory of Utah, wherein Thomas Fenton is appellant and you are appellee, to show cause, if any you have, why the judgment made and entered therein on the 1st day of July, A. D. 1886, in your favor as defendants against said Thomas Fenton, appellant, as plaintiff, should not be reversed and speedy justice be done the parties in that behalf.

Witness the Honorable W. B. Woods, justice of the Supreme Court of the United States, this 9th day of August, in the year of our Lord one thousand eight hundred and eighty-six.

W. B. WOODS.

52½ [Endorsed:] Thomas Fenton *vs.* Salt Lake County *et al.* Citation. Filed Aug. 16, 1886. E. T. Sprague, clerk. The service of the within is hereby admitted by the delivery to the appellee — a true copy thereof this 17th day of August, 1886. Z. Snow, attorney for appellee.

53 Supreme Court of the United States.

Know all men by these presents that we, Thomas Fenton, as principal, and William A. Wetzel and Wallace Fenton, as surety, are held and firmly bound unto Salt Lake County, in the Territory of Utah, in the sum of thirteen hundred dollars, to be paid to the said Salt Lake County; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated this —.

Whereas the above-named Thomas Fenton hath prosecuted an appeal to the Supreme Court of the United States to reverse a judgment in a suit in which the said Thomas Fenton is plaintiff and the said Salt Lake County is one of the defendants by the supreme court of the Territory of Utah:

Now, therefore, the condition of this obligation is such that if the above-named Thomas Fenton shall prosecute his appeal to effect and answer all damages and costs if he shall — make good
54 his plea, then this obligation shall — void; otherwise the same shall remain in full force and virtue.

THOMAS FENTON. [SEAL.]
WILLIAM A. WETZEL. [SEAL.]
WALLACE FENTON. [SEAL.]

UTAH TERRITORY, } ss:
County of Salt Lake, }

William A. Wetzel, being first duly sworn, deposes: I am a resident freeholder of said county, and I am worth the sum of thirteen hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

WILLIAM A. WETZEL.

Subscribed and sworn to before me July 31st, 1886.
[SEAL.] WM. C. HALL,
Notary Public.

UTAH TERRITORY, } ss:
County of Salt Lake, }

Wallace Fenton, being first duly sworn, deposes: I am a resident freeholder of said county, and I am worth the sum of thirteen hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

WALLACE FENTON.

Subscribed & sworn to before me July 31st, 1886.
[SEAL.] WM. C. HALL,
Notary Public.

55 Approved August 9th, 1886.
W. B. WOODS,
Associate Justice U. S. Supreme Court.

Endorsed: Filed Aug. 16th, 1886. E. T. Sprague, clerk.

56 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, E. T. Sprague, the clerk of the supreme court of the said Territory of Utah, in pursuance of an appeal allowed in the cause of Thomas Fenton, appellant, *vs.* Salt Lake County, respondent, lately pending in said court, do return hereto attached a transcript of the

record, proceedings, opinion, affidavits of J. D. Lomax and of Thomas Fenton of value of matter in dispute, and of bond on appeal, together with original petition for allowance of appeal to Hon. W. B. Woods, with exhibits attached thereto, and order allowing appeal and citation thereon, all in and of said court and cause, to the Supreme Court of the United States; and I hereby certify that said attached transcript of the record, proceedings, opinion, affidavits, and bond is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.

Seal United States of America, Supreme Court Territory of Utah.

In witness whereof I hereto set my hand and affix the seal of said supreme court of Utah Territory this 4th day of October, A. D. 1886, at Salt Lake City, Utah.

E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

Endorsed on cover: Utah Territory supreme court. No. 230. Thomas Fenton, appellant, *vs.* Salt Lake County *et al.* Filed October 21, 1886.